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Supreme Court, U.S.
FILED
AUG 10 1970
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IN THE

Supreme Court of the United States

October Term, 1969

No. 1514

ALFONSO SABINO,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, STATE OF CALIFORNIA; and HENRY W. SHATFORD, as a Judge of said Court.

Respondents.

PETITION FOR REHEARING

Alfonso Sabino
4928 Marathon Street
Los Angeles, California
90029

Petitioner

Pro Se

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To the Honorable Chief Justice Warren E. Burger and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now Alfonso Sabino and petitions this Honorable Court for a rehearing of it's order dated June 15, 1970, which denied certiorari, and respectfully requests that the Court now grant certiorari

Upon consideration of petitioners timely application, which was filed within twenty-five days after certiorari was denied, Justice William O. Douglas extended the time to file this petition for rehearing to August 10, 1970.

The petition for certiorari previously filed herein presented the questions of denial , to petitioner, of due process of law, including denial of equal protection of the laws under the provisions of the Fourteenth Amendment to the Constitution of the United States by reason of the respondents refusal to adhere to or apply the strict requirements of Section 170.6, California Code of Civil Procedure as decided and applied in other cases by the appellate courts of California. The full text of the California statute referred to, namely Section 170.6 Code of Civil Procedure, was included as "Appendix A" in the petition for certiorari previously filed and is now made a part hereof by this reference thereto.

The point which petitioner apparently has failed to make clear to this Court is the precise time that the respondent Judge was in fact, and as a matter of law, disqualified and deprived of jurisdiction in the action in relation to the time when the respondent Judge made orders for the physical examination of petitioner.

In attempting to clarify points the supporting proof which petitioner shall make reference to herein as (R.T. #1), (R.T. #2) etc., are are official court

reporter's transcripts of proceedings in the respondent court, which have been filed in this Court as part of the record.

CIRCUMSTANCES OF DISQUALIFIC-
ATION OF THE RESPONDENT JUDGE.

Circumstances of the disqualification of the respondent Judge are as follows:

1. It was November 17, 1969 that petitioner for the first time appeared in court for any reason since the filing of the complaint, by petitioner, in the respondent court.

2. It was the first time, on said November 17, 1969 that petitioner had ever seen or heard of the respondent Judge Henry W. Shatford and was totally unaware of what to expect of the respondent Judge.

3. Petitioner was before the respondent Judge on November 17, 1969 by reason of a motion filed by petitioner which had nothing to do with the later making of an order for physical examination of petitioner.

4. In spite of the fact that the hearing of November 17, 1969 had been actually noticed and filed on November 7th, 1969 when the matter came on for hearing before the respondent Judge on November 17, 1969 said Judge was totally unprepared for the hearing, was totally unfaliliar with what the hearing was

to concern. The respondent Judge relied on the adverse party to the proceedings to familiarize him on what was before the court and at no time was concerned or ever took the time to understand the nature of the proceedings before him or material contents of the court file which was in the possession of the clerk and not before the respondent Judge during proceedings. See contents of R.T.#1 for what transpired at the proceedings of November 17, 1969 before the respondent Judge.

5. Petitioner took exception to the proceedings before the respondent Judge on November 17, 1969. Petitioner, at that time, also asserted that he was being denied due process under the Fourteenth Amendment to the Constitution of the United States. (R.T. #1, page 9, lines 3 to 7).

6. Immediately after the proceedings of November 17, 1969 concluded before the respondent Judge petitioner immediately proceeded to prepare a declaration for disqualification of the respondent Judge in the forthcoming proceedings of November 20, 1969 which the respondent Judge indicated that he would be hearing on November 20, 1969 in spite of the fact that the proceedings were noticed for another department of the respondent court.

7. Petitioners affidavit of prejudice to disqualify the respondent Judge was dated November 17, 1969 and filed in

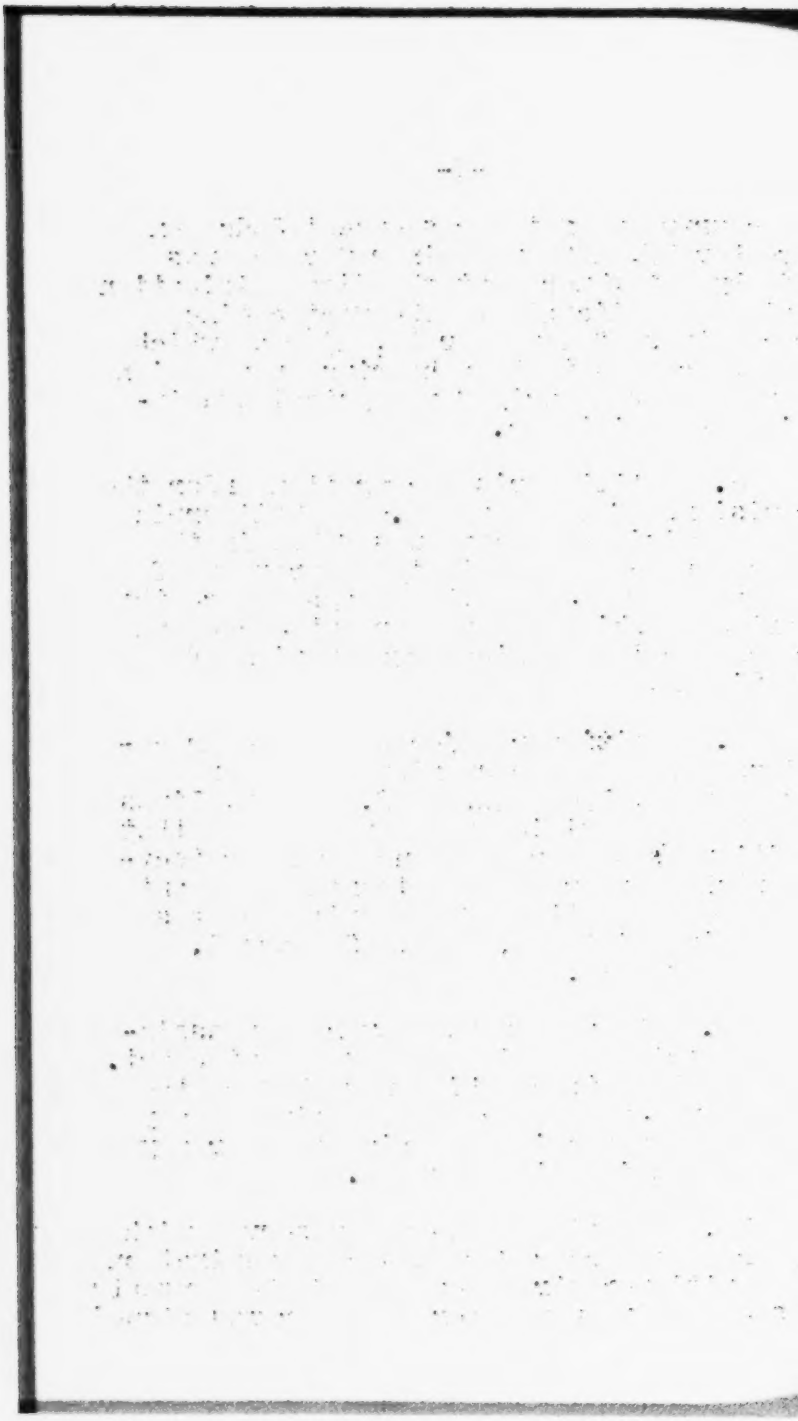
the courtroom of the respondent Judge on November 17, 1969 wherein reference was made by petitbner that the disqualification would be applicable to the forthcoming proceedings of November 20, 1969 at which time there was to be a hearing on a motion by the adverse party for physical examination of petitioner.

8. Petitioner's declaration under the provisions of Section 170.6 of California Code of Civil Procedure was filed in the respondent court and in the courtroom of the respondent Judge three days before the hearing at which the respondent Judge made orders for the physical examination of petitioner.

9. Petitioner objected to the proceedings before the respondent Judge on November 20, 1969 (R.T. #2, page 2, lines 1 to 9) and petitioner again asserted that petitioner's due process and equal protection rights under the Fourteenth Amendment to the Constitution of the United States were being violated. (R.T. #2, page 3, lines 19 to 23).

10. The action had never been assigned any trial date in the respondent court. None of the matters which were before the respondent Judge concerned setting of any trial date nor going to trial than or any time in the immediate future.

11. Petitioner was never served with any proposed order for physical examination and petitioner first learned of the contents of such order only after the order was signed



by the respondent Judge whereby petitioner was deprived of any opportunity to make any objection for the record as to the contents of the orders made by respondent Judge for physical examination of petitioner.

12. Legally, under the provisions of section 170.6 California Code of Civil Procedure and according to californi decisions the respondent Judge was disqualified upon the filing of the affidavit of prejudice on November 17, 1969 and had no jurisdiction to entertain nor proceed in any matter in the action after the filing of such declaration by petitioner.

13. The orders made by the respondent Judge on November 20, 1969 for the physical examination of petitioner were and are null and void, according to California law, because said judge lose jurisdiction to proceed in any matter in the action as of November 17, 1969

CONCLUSION

Under the circumstances and because none of the matters before the respondent Judge involved going to trial immediately petitioners declaration of prejudice to disqualify the respondent Judge was timely filed and did not fall within any time limitation for it's filing. Section 170.6 clearly provides that petitioner could have filed such declaration up to and including the commencement of the hearing

before the respondent Judge on November 20, 1969 and would have been considered timely and sufficient to divest him of jurisdiction to proceed in any matter in the action.

It is conclusive that the respondent Judge was without jurisdiction to make any orders relating to petitioner in the action in the trial court and that the orders made by him on November 20, 1969 for physical examination of petitioner were and are null and void and in violation of petitioners rights of due process and equal protection rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

As a result of the failure of the California Appellate Courts to decide the question of the respondent Judge's disqualification other judges of the respondent court have subsequently decided that the orders made bt the respondent Judge were vaild orders and, without affording petitioner the opportunity to see whether or not this Court would grant certiorari the action was ordered dismissed by the respondent Court on May 7, 1970 and petitioner is now deprived of the right to have an action for injuries suffered by petitioner because of petitioners failure to sibmit to null and void orders of the respondent Judge, and the respondent Court.

The equal protection clause of the Fourteenth Amendment to the Constitution of the United States prohibits the invidious discrimination that petitioner has been subjected to by the respondent court and

it's Judges.

The invidious discrimination which petitioner has been subjected to is commonly and openly a means of expressing contempt for all persons in the Los Angeles court system who represent themselves by reason of necessity or choice because of the increasing incompetence and resort to unethical practices in the legal profession which the respondent court has been increaseingly condoning and encouraging, which only operates to undermine the confidence of the public in our judicial system.

The action taken by the respondent Court and the respondent Judge in this case and contrary to statutory as well as case law which are compelling reasons why the questions presented should be reviewed and definitely determined by this Court.

For the reasons set forth in this petition for rehearing, as well as in the petition for certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

/S/ ALFONSO SABINO

Alfonso Sabino
4928 Marathon Street
Los Angeles, California

Petitioner - Pro Se

CERTIFICATE OF PETITIONER

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

/S/ ALFONSO SABINO

Alfonso Sabino
Petitioner - Pro Se

Appendix A

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Respondents.

AFFIDAVIT OF SERVICE

State of California)
County of Los Angeles) ss.

I, ALFONSO SABINO, depose and say:

That I am the petitioner above named; that I am representing myself pro se; that on the Ninth day of August 1970 I served my "PETITION FOR REHEARING"; and, the circumstances of service are as follows:

I served the respondents by endorsing on the front of a copy of the petition "For: JOSEPH A. WAPNER, Presiding Judge";

on another copy "For: Henry W. Shatford". I then enclosed both of said copies in the same envelope together with four additional copies, sealed it, affixed thereto first class postage, fully prepaid, and I did deposit same in the United States Mail at Los Angeles, California addressed as follows:

JOSEPH A. WAPNER, Presiding Judge
Room 204, Courthouse
111 North Hill Street
Los Angeles, California 90012

I served the Attorney General of the State of California by enclosing three copies of the petition in an envelope, sealing same, affixing thereto first class postage, fully prepaid, and I did deposit same in the United States Mail at Los Angeles, California addressed as follows:

THOMAS C. LYNCH
Attorney General of California
217 West First Street
Los Angeles, California 90012

I served the real party of interest BILL WASHINGTON WHITE by enclosing three copies of the petition in an envelope, sealed it, affixed thereto first class postage, fully prepaid, and I did deposit same in the United States Mail at Los Angeles, California addressed as follows:

PATTERSON, RITNER & LOCKWOOD
Attorneys at Law
639 South Spring Street
Los Angeles, California 90014

The Court of Appeal was served by my enclosing three copies of the petition in an envelope which I sealed and affixed thereto first class postage, fully prepaid, and I did deposit same in the United States Mail at Los Angeles, California addressed as follows:

PRESIDING JUDGE, Court of Appeal
2d Appellate District
217 West First Street
Los Angeles, California 90012

All parties required to be served have been served.

/S/ ALFONSO SABINO

Alfonso Sabino

SUBSCRIBED AND SWORN TO before me at Los Angeles, California this NINTH day of AUGUST 1970.

(NOTARY SEAL)